

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-185681

DATE: June 24, 1976

MATTER OF: Sentinel Electronics, Inc.

DIGEST:

Bid of apparent low bidder was determined nonresponsive due to insertion of its own part and drawing numbers in lieu of those specified in IFB, which created initial ambiguity as to what bidder actually intended to offer. However, since bidder noted on face of bid that drawing had been supplied under earlier Government contract, contracting officer should make reasonable effort to review drawing to determine responsiveness of bid. If drawing conclusively proves bidder's product is identical to that requested under IFB, award should be made to bidder, if otherwise proper, and subsequently issued RFP canceled.

Sentinel Electronics, Inc. (Sentinel), protests the determination by the Defense Electronics Supply Center that its bid was nonresponsive under invitation for bids (IFB) No. DSA900-76-B-0958 issued by the Defense Supply Agency (DSA) and the subsequent cancellation of the IFB and resolicitation under request for proposals (RFP) No. DSA900-76-R-1423.

IFB No. DSA900-76-B-0958, issued on November 11, 1975, requested the manufacture and delivery of 661 electrical switches. The technical description and specifications for the switch were listed in the schedule under item 0001 on page 8 of the solicitation as follows:

"NSN 5930-00-111-8550
SWITCH, ELECTRICAL
P/N GD-4460-1
To be mfg IAW ASC System (FSCM 70117)
DWG's GD 4460"

Since the ASC System drawing referenced two types of switches, each having a different thumbscrew indicator knob, the GD-4460-1 was placed in the specifications to designate the required type. A copy of the controlling ASC Systems drawing was furnished to each bidder with the solicitation.

On December 9, 1975, the amended bid opening date, three bids were received. The bid of ASC Systems Corporation and Tech Labs, Inc., were determined to be nonresponsive by the contracting officer since each failed to conform to the required delivery schedule as set forth in the IFB. Sentinel, the low bidder, was also determined to be nonresponsive. On page 8 of Sentinel's bid, it crossed out the ASC Systems drawing number and part number and inserted its own drawing number and part number in its place. Sentinel did not furnish a copy of its drawing with its bid nor did the procuring activity have any knowledge of the specifications contained in the Sentinel drawing. In addition, Sentinel typed the following under the specifications on page 8:

"NOTE: The above item was furnished by Sentinel Electronics, Inc. to ESC Hanscom Field, MA under contract F33657-71-C-0113 as part of the C-6280A-(P)/APX, Control, Transporter Set. Equipment and Components were qualified per DOD AIMS Spec. 64-302A and our drawings were submitted as contractually required. Warner-Robins ALC is now the cognizant procurement agency for the C-6280A(P)/APX."

The administrative report states that since Sentinel changed the specifications and the IFB did not authorize alternate bids, the Sentinel bid was rejected by the contracting officer. By letters dated January 9, 1976, the three bidders were notified that their bids had been rejected and that the IFB was canceled.

On January 13, 1976, RFP No. DSA900-76-R-1423 was issued and it requested prices for supplying various quantities of electrical switches, NSN 5930-00-111-8550. Although the RFP specified, as did the preceding IFB, that the switches were to be manufactured in accordance with ASC Systems drawing GD4460, this new solicitation, under the "Products Offered" clause on page 5 of the RFP, permitted alternative offers to be submitted and provided that if alternative offers were submitted, sufficient data be furnished to determine that the item offered be equal to the one specified in the RFP.

The three original bidders under the canceled IFB submitted offers under the RFP. Sentinel again offered to supply its own part manufactured in accordance with its own drawing, which this time it submitted for evaluation purposes. No award has been made pending the outcome of this protest.

Counsel for Sentinel, in support of its protest against the cancellation of the IFB, argues that the contracting officer has incorrectly interpreted the requirements of the IFB and acted improperly by rejecting the Sentinel bid as nonresponsive. In addition, counsel contends that the bid clearly showed all information necessary to establish that Sentinel's offered product was identical to that required by the IFB.


The major issue in this protest is the effect of Sentinel's inclusion in its bid of an unsolicited model number. Our Office has held that an unsolicited listing of a model number creates an initial ambiguity. Abbott Laboratories, B-183799, September 23, 1975, 75-2 CPD 171; Lift Power, Inc., B-182604, January 10, 1975, 75-1 CPD 13; B-174025, March 31, 1972; 50 Comp. Gen. 8 (1970). See also B-175178, May 25, 1972, where the bid was determined to be nonresponsive for the inclusion of an unidentified part number. When a part number is included in the bid it is not clear whether the bidder is offering to supply material in complete conformance with the specifications in the IFB or merely offering to supply a particular part which may or may not conform to the specifications. Unless it is shown that the part number listed conforms to the specifications, the bid must be rejected as nonresponsive to the IFB. As we stated in Lift Power, Inc., supra, "[t]he question of the responsiveness of a bid concerns whether a bidder has unequivocally offered to provide the requested items in total conformance with the terms and specification requirements of the invitation." (Emphasis supplied.)

The initial ambiguity as to whether the bidder is offering an item that conforms to the specifications may be clarified by the presence of an express statement in the bid that the part indicated conforms with all the requirements listed in the IFB. See B-178046, July 25, 1973. Such an express statement that the specifications would be complied with was not included in Sentinel's bid.

Another method by which the initial ambiguity may be clarified is by the contracting officer's evaluation of data, available

prior to bid opening, which indicates conformity of the offered part to the specifications in the IFB. B-178046, supra. Only the material available at bid opening may be considered. Reliance on information supplied by a bidder after bid opening is not permissible, since such a practice would allow the bidder an option to affect the responsiveness of his bid. Waukesha Motor Company, B-178494, June 18, 1974, 74-1 CPD 329. This determination can also be made from published commercial literature which is publicly available prior to bid opening. See B-178377, July 25, 1973.

Sentinel's bid included the notation that the item called for was furnished under a previous contract to Hanscom Field, Massachusetts (Hanscom Field), and drawings were submitted as contractually required. While this statement does not contain information that clearly shows Sentinel's product to be identical to that required by the instant IFB, the record does not indicate that an inquiry by the contracting officer directed to the proper personnel at Hanscom Field was made to disclose whether the data available would resolve the ambiguity. It is our view that a reasonable effort should be made by the contracting officer to effect a review of the data available to the Government at Hanscom Field prior to bid opening to attempt to discern the responsiveness of Sentinel's bid. See B-173486, January 5, 1972. If the drawings conclusively prove that Sentinel's product is identical to that requested under the IFB, the RFP should be canceled and award made to Sentinel as the lowest responsive, responsible bidder, if otherwise proper, under the original IFB. If the drawings do not establish the acceptability of the item offered, the contracting officer acted properly in determining Sentinel's bid nonresponsive and in canceling the IFB. See GEL Systems Inc., B-184824, December 22, 1975, 75-2 CPD 406.


Deputy Comptroller General
of the United States